

REMARKS

Reexamination and reconsideration of claims 1-27, 29-42, and 44 are respectfully requested. This is the first Reply after the filing a Request for Continued Examination (RCE).

Claims 1-5, 7-9, 11, 13-23, 26, 28, 30 and 31 were rejected under 35 U.S.C. sec. 102(b) applying WO99/53353 (the '353 publication). The '353 publication requires a fiber optic cable having two profiled bodies that are inserted into each other in such a way that they provide a substantially circular seal for a chamber in the form of a protective tube. See the Abstract of the '353 publication. For a reference to be applicable under sec. 102(b), the reference must, *inter alia*, disclose each and every feature of the claimed invention.

In addition to maintaining the arguments from the previous Replies, Applicants assert that the Office Action is misinterpreting the '353 publication. The Office Action is merely making the same rejections again without regard to the objective evidence of the references that is contrary to the assertions of the Office Action. These substantive issues were raised by Applicants previously, but are not being address in the outstanding Office Action.

Specifically, the interpretation of the '353 publication given in the Office Action dated April 28, 2004 is contrary to the objective evidence of record. Without question the '353 publication discloses two profiled bodies that are inserted into each other for providing a seal for a chamber in the form of a protective tube. See the Abstract of the '353 publication. However, the Office Action asserts that the "...optical fiber can be accessed at the fiber access opening without substantially disturbing the strength member."

The objective evidence of the '353 publication clearly supports that the assertion in the Office Action is impossible

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and contrary to the objective evidence of record. The assertion is impossible because the two profiled bodies are inserted into each other to provide a seal for a chamber that forms a protective tube. So if a utility knife is used to remove the jacket, the optical fiber is surrounded by the protective tube formed by the two profiled bodies. There is no possible way to access the optical fiber therein without performing another step that substantially disturbs the arrangement of the two profile bodies by separating them because the profiled bodies form a protective tube around the optical fiber. Furthermore, the Office Action does not provide any credible evidence of record to dispute the disclosure of the '353 publication. In other words, the Office Action is making an arbitrary and capricious conclusion on the record that is contrary to the evidence of the '353 publication.

On the other hand, as shown in Fig. 2 the present invention is advantageous because once the jacket 17 is removed the optical fiber 11 can be removed through the fiber access opening. See, for example, Fig. 2 and p. 9, 11. 10-13 of the present invention. Thus, independent claims 1 and 17 are patentable over the '353 publication. For at least the reasons stated, the withdrawal of the sec. 102(b) rejection of claims 1-5, 7-9, 11, 13-23, 26, 28, 30 and 31 is warranted and respectfully requested.

Claims 1 and 17 were rejected under 35 U.S.C. sec. 102(b) applying U.S. Pat. No. 4,852,966 (the '966 patent). Applicants again respectfully assert that the '966 patent was misinterpreted in the Office Action because it does not disclose, teach, or otherwise suggest each and every feature of the claims. For a reference to be applicable under sec. 102(b), the reference must, *inter alia*, disclose each and every feature of the claimed invention.

The '966 patent requires an optical cable element consisting of a corrugated sheet 4 requiring tapelike sheets 2,3 secured to

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both sides using adhesive and optical waveguides disposed in hollow spaces between the same. See the Abstract of the '966 patent. In other words, the optical fibers are required to be enclosed in a hollow space, i.e. a chamber, formed by the tapelike sheets 2,3 and the corrugated sheet 4. See Col. 1, ll. 57-60 of the '966 patent.

On the other hand, the Office Action is misinterpreting Fig. 1 which shows a partial view of corrugated sheet 4 asserting that it discloses for a fiber access opening for accessing optical fiber 5. This is incorrect. As illustrated in Fig. 1, corrugated sheet 4 is represented by phantom lines intended for showing that it continues until it reaches tapelike sheets 2,3 where it is secured thereto. However, the Office Action completely ignores the inclusion of the phantom lines continuing from corrugated sheet 4. Again, the Office Action is making an arbitrary and capricious conclusion on the record that is contrary to the evidence of the '966 patent. Furthermore, the Office Action does not provide any credible evidence of record to dispute the disclosure and illustration of Fig. 1 in the '966 patent.

Since the fibers are enclosed in respective chambers the '966 patent does not have a fiber access opening as stated, rather one of the tapelike sheets 2,3 must be peeled from corrugated sheet 4 to access a fiber.

Moreover, the '966 patent relates to a cable that employs twisted cable elements as shown in Fig. 3 that are formed into a stable tube by the hollow-tube winding technique. See the '966 patent at Col. 2, ll. 28-30. If the optical fibers were not enclosed in the respective chambers formed by corrugated sheet 4 secured to tape-like sheets 2,3, they would pop-out when the cable element was twisted to form the hollow tube. This is not the intent of the patent and is further evidence that the corrugated sheet 4 is secured to tape-like sheets 2,3 at the

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ends. For at least these reasons, withdrawal of the sec. 102(b) rejection of claims 1 and 17 is warranted and is respectfully requested.

Claims 10, 24, and 25 were rejected under 35 U.S.C. sec. 103(a) applying the '353 publication in view of U.S. Pat. No. 6,137,936 (the '936 patent). The sec. 103(a) rejection of claims 10, 24, and 25 is respectfully traversed for the reasons stated above with respect to claims 1 and 17. For at least this reason, withdrawal of the sec. 103(a) rejection of claims 10, 24, and 25 is warranted and is respectfully requested.

Claims 12, 27, and 32-44 were rejected under 35 U.S.C. sec. 103(a) applying the '353 publication without a teaching reference. The sec. 103(a) rejection of claims 12, 27, and 32-44 is respectfully traversed for the reasons stated above with respect to claims 1 and 17. For at least this reason, withdrawal of the sec. 103(a) rejection of claims 12, 27, and 32-42, and 44 is warranted and is respectfully requested.

Claims 6 and 29 were rejected under 35 U.S.C. sec. 103(a) applying the '966 patent without a teaching reference. The sec. 103(a) rejection of claims 6 and 29 is respectfully traversed for the reasons stated above with respect to claims 1 and 17. For at least these reasons, withdrawal of the sec. 103(a) rejection of claims 6 and 29 is warranted and is respectfully requested.

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No fees are believed due with the filing of this Reply. If any fees are due in connection with this Reply, please charge any fees, or credit any overpayment, to Deposit Account Number 19-2167.

Allowance of all pending claims is believed to be warranted and is respectfully requested.

The Examiner is welcomed to telephone the undersigned to discuss the merits of this patent application.

Respectfully submitted,

  
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Date: July 28<sup>th</sup>, 2004